STATE OF MICHIGAN

IN THE SUPREME COURT

NL VENTURES VI FARMINGTON, LLC,
Plaintiff-Appellant/Cross-Appellee,

v

CITY OF LIVONIA,
Defendant-Appellee/Cross-Appellant.

Supreme Court Case No. 153110
Court of Appeals
Docket No. 323144
Wayne County Circuit Court No.
13-004863-CZ

AMICUS CURIAE BRIEF OF THE MICHIGAN MUNICIPAL LEAGUE, THE MICHIGAN TOWNSHIPS ASSOCIATION, AND THE PUBLIC CORPORATION LAW SECTION IN SUPPORT OF THE CITY OF LIVONIA

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STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this appeal based on the Plaintiff-Appellant's application for leave and MCR 7.305.

STATEMENT OF INTEREST

The amicus curiae Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments, of which 478 are also members of the Michigan Municipal League Legal Defense Fund (the "Legal Defense Fund"). The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance. This brief amicus curiae is authorized by the Legal Defense Fund's Board of Directors, whose membership includes the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Clyde J. Robinson, city attorney, Kalamazoo; John C. Schrier, city attorney, Muskegon; Lori Grigg Bluhm, city attorney, Troy; Eric D. Williams, city attorney, Big Rapids; James J. Murray, city attorney, Boyne City and Petoskey; Robert J. Jamo, city attorney, Menominee; Thomas R. Schultz, city attorney, Farmington and Novi; Lauren Trible-Laucht, city attorney, Traverse City; Ebony L. Duff, city attorney, Oak Park;

Steven D. Mann, city attorney, Milan; and William C. Mathewson, general counsel, Michigan Municipal League.

The Michigan Municipal League's Legal Defense Fund Board authorized the preparation and filing of this motion and the amicus curiae brief in support of the City of Livonia to explain importance of protecting the validity of municipal liens for water and sewer service created or authorized by the Municipal Water and Sewer Lien Act, MCL 123.161 - 123.167, and MCL 141.121(3) of the Revenue Bond Act, and the legal effect of a municipality not following its own ordinance.

The amicus curiae Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consisting of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amicus curiae basis in a large number of state and federal cases presenting issues of statewide significance to Michigan townships. The Michigan Townships Association, established in 1953, is widely recognized for its years of experience and knowledge with regard to municipal issues. The MTA authorized participation in this case in the Court of Appeals by joining in the amicus curiae brief of the Michigan Municipal League regarding the misconstruction of the two

statutes on liens for water and sewer service charges and the legal effect of a municipality not following its own ordinance. The MTA authorized participation in the Supreme Court by joining in the amicus curiae brief with the Michigan Municipal League to explain the importance of protecting the validity of municipal liens for water and sewer service created or authorized by the Municipal Water and Sewer Lien Act and the Revenue Bond Act, and the legal effect of a municipality not following its own ordinance.

The Public Corporation Law Section of the State Bar of Michigan is a voluntary membership section of the State Bar of Michigan, comprised of approximately 636 attorneys who generally represent the interests of government corporations, including cities, villages, townships and counties, boards and commissions, and special authorities. Although the Section is open to all members of the State Bar, its focus is centered on the laws, regulations, and procedures relating to public law. The Public Corporation Law Section provides education, information and analysis about issues of concern to its membership and the public through meetings, seminars, the State Bar of Michigan website, public service programs and publications. The Public Corporation Law Section is committed to promoting the fair and just administration of public law. In furtherance of this purpose, the Public Corporation Law Section participates in cases that are significant to governmental entities throughout the State of Michigan. The Section has filed numerous amicus curiae briefs in state and federal courts. The Public Corporation Law Section Council, the decision-making body of the Section, is currently comprised of 21 members. The filing of this Amicus Curiae Brief was authorized at a March 4, 2017

regular meeting of the Council held in accordance with Section 6.2.1 of the Council's Bylaws. A quorum of the Council was present at the meeting (12 members), and the motion passed unanimously, 11-0 (M. Fales, G. Fisher, S. Joppich, M. McGee, C. McKone, C. Mish, C. Mullhaupt, M. Nettleton, C. Rosati, D. Walling, and M. Watza voted in favor of the motion). No one voted against the motion and one member (E. Williams) abstained from consideration of and voting on the motion. The position expressed in this amicus curiae brief is that of the Public Corporation Law Section only and is not the position of the State Bar of Michigan. The PCLS Council was interested in emphasizing the importance of preserving water and sewer liens created by the Municipal Water and Sewer Lien Act, and liens for public improvement services authorized by the Revenue Bond Act. The water and sewer liens should not be weakened due to a peculiar set of factual circumstances in which Livonia delayed one year in placing delinquent water service charges of one account on the tax roll at the request of the tenant customer.

QUESTIONS PRESENTED

I. DOES MCL 123.161 *ET SEQ*, MCL 141.121(3) OR ANY OTHER STATUTE AUTHORIZE LIVONIA'S METHOD TO ENFORCE COLLECTION OF THE WATER SERVICE LIENS?

Plaintiff-Appellant NL Ventures says	"No"
Defendant-Appellee Livonia says	"Yes"
Amici MML, MTA and PCLS say	"Yes"
Court of Appeals said	"Yes"
Trial Court said	"No"

II. IS LIVONIA PROHIBITED FROM COLLECTING THE DISPUTED LIENS BECAUSE OF FAILING TO PLACE THEM ON THE TAX ROLL EACH YEAR AS REQUIRED BY THE LIVONIA ORDINANCE?

Plaintiff-Appellant NL Ventures says	"Yes"
Defendant-Appellee Livonia says	"No"
Amici MML, MTA and PCLS say	"No"
Court of Appeals said	"No"
Trial Court said	"Yes"

STATEMENT OF FACTS

The Amici accept the statement of facts of the City of Livonia in its brief in opposition to Appellant-Plaintiff's application for leave to appeal. For purposes of submitting this amicus curiae brief, a few key facts are identified. At the request of the water service customer and upon recommendation of the Livonia Water and Sewer Board, Livonia officials did not certify delinquent water service charges to the tax assessing officer for placement on the tax roll and against Plaintiff-Appellant's real property in 2011. The following year, 2012, Livonia officials certified the delinquent water service charges to the tax assessing officer, and the charges were entered on the tax roll and against Plaintiff-Appellant's real property. Plaintiff-Appellant did not avail itself of the statutorily prescribed process in the Municipal Water and Sewer Lien Act and the Revenue Bond Act for avoiding the water service liens.

Plaintiff-Appellant filed suit, claiming Livonia was prohibited from placing the delinquent water service charges on the tax roll in 2012 because Livonia did not place the delinquent water service charges on the tax roll in 2011. Plaintiff-Appellant characterized the delinquent water service charges as damages, because Plaintiff-Appellant would have to pay them when the liens were enforced and collected like property taxes.

INTRODUCTION

This case involves statutes that are litigated infrequently and water service liens that are not well understood. Recognizing that trial courts and appellate courts rarely encounter these issues, the Michigan Municipal League, the Michigan Townships Association, and the Public Corporation Law Section authorized the preparation and filing of an amicus curiae brief to support the position of the City of Livonia, describe the workings of municipal water service liens that are created and authorized by two different statutes, and explain some of the broad legal principles implicated by the Plaintiff-Appellant's arguments and claims.

There is the potential for an unintended disastrous outcome in this case if the Supreme Court rules in a way that weakens, dilutes, or invalidates water service liens created by state law under the Municipal Water and Sewer Lien Act, MCL 123.162 *et seq*, or the Revenue Bond Act, MCL 141.101 *et seq*. There are billions of dollars worth of outstanding bonds for Michigan municipal public improvements, and a ruling that invalidates or calls to question the liens authorized by MCL 141.121 will send shockwaves through municipal bond holders and the municipal bond financing market in Michigan.

Validating Plaintiff-Appellant's challenges to charges on the tax roll or tax bill outside of the established standards in MCL 123.163 and the General Property Tax Act would open the courthouse doors to property owners and mortgage holders who seek to

avoid the super priority lien status of water or sewer service liens on thousands of distressed properties throughout Michigan.

Michigan municipalities administer and operate water and sewer utilities for the benefit of millions of people through facilities that are designed and constructed to provide service through structures on real property. The statutorily authorized liens for water and sewer services are attached to the real property where the services are provided, regardless of the identity or status of the specific users who run the water or flush the toilet. The water and sewer service liens impose a statutorily determined risk of loss for unpaid service charges on the real property where the services are delivered to the owner, or the owner's family, guests, and invitees, including tenants. This risk of loss hierarchy was determined by the Michigan legislature, recognizing that all of the water and sewer service customers must pay the total operational cost of the systems, not the municipality or the taxpayers of the municipality.

This case also presents the vexing question of what legal consequence should result from Livonia's failure to follow its own ordinance in 2011 regarding placement of delinquent water service charges on the tax roll. The legal consequence of Livonia's inaction in 2011 was the absence of delinquent water service charges on the Plaintiff-Appellant's tax bill, with no prospect of collection by foreclosure for nonpayment. The legal consequence of Livonia's action in 2012 was the placement of delinquent water

service charges on the tax roll and Plaintiff-Appellant's tax bill, with the prospect of collection by foreclosure for nonpayment.

The imposition of a water service lien by operation of state law, and the enforcement of the water service lien by a municipality as authorized by state law, cannot be a tort by which the water service charges are damages suffered by the property owner. The legislature determined that the property owner bears the primary risk of loss when the tenant fails to pay the water bill.

ARGUMENT

MCL 123.161 *ET SEQ*, MCL 141.121(3), AND THE GENERAL PROPERTY TAX ACT AUTHORIZE LIVONIA'S METHOD TO ENFORCE COLLECTION OF THE WATER SERVICE LIENS.

Summary of Argument

Both statutes expressly create or authorize the creation of water service liens by a municipality, with enforcement and collection by the general laws of the state for the enforcement of tax liens.

MCL 123.161

When interpreting the language of the Municipal Water and Sewer Lien Act and the Revenue Bond Act, principles of statutory construction apply.

> This case involves the interpretation and application of a statute, which is a question of law that this Court reviews de novo. When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent.

Whitman v City of Burton, 493 Mich 303, 312; 831 NW2d 223 (2012), citations omitted.

Both Acts authorize Livonia's method of enforcement and collection of the water service liens, with no defense in the statutes given to property owners like Plaintiff-Appellant for a delay in municipal enforcement of the liens, other than the three year period of limitation in MCL 123.162.

MCL 123.161 *et seq* is "An Act to provide for the collection of water or sewage system rates, assessments, charges or rentals; and to provide a lien for water or sewage system services furnished by municipalities as defined by this act." The definition of a municipality in MCL 123.161 includes Livonia as "a county, city, township, village or metropolitan district."

MCL 123.162 plainly creates an immediately effective lien for water service provided by a municipality, emphasis added.

> **A municipality which**... **operates a water distribution system**... for the purpose of supplying water... to the inhabitants of the municipality, **shall have as security for the collection of water... rates**, or any assessments, charges, or rentals due or to become due,... **for the**... **use or consumption of water supplied to any** house or other **building or premises**,... **a lien upon the** house or other **building and upon the premises**, lot or lots, parcel or parcels of land upon which the house or building is situated or **to which the... water service was supplied**. **This lien shall become effective immediately upon the distribution of the water... to the premises** or property supplied, but shall not be enforceable for more than 3 years after it becomes effective.

A municipality is authorized to enforce the water service lien by MCL 123.163.

> The lien created by this act may be enforced by a municipality in the manner prescribed in the charter of the municipality, by the general laws of the state providing for the enforcement of tax liens, or by an ordinance duly passed by the governing body of the municipality.

MCL 123.164 declares that the "[t]he official records of the proper offices, board, commission, or department of any municipality having charge of the water distribution system or sewage system shall constitute notice of the pendency of the lien." Water service liens are not stated in a document and filed with the register of deeds; the official records of the water utility "shall constitute notice of the pendency of the lien."

MCL 123.165 grants priority to the water or sewer service lien over everything "except taxes or special assessments." MCL 123.165 also says the lien "shall not apply if a lease has been legally executed, containing a provision that the lessor shall not be liable

for payment of water or sewage system bills" and an "affidavit with respect to the execution of a lease containing this provision shall be filed with the... official in charge of the water works." NL Ventures did not take advantage of this mechanism to avoid the water service lien created by the statute.

MCL 123.166 authorizes a municipality to shut off the service for nonpayment or file suit to collect the water service charges.

> A municipality may discontinue water service... from the premises against which the lien created by this act has accrued if a person fails to pay the rates, assessments, charges or rentals for the respective service, or may institute an action for the collection of the same in any court of competent jurisdiction.

MCL 123.166 declares that "a municipality's attempt to collect these… water rates… charges, or rentals by any process shall not invalidate or waive the lien upon the premises."

In MCL 123.167 the legislature made it clear that the act did not repeal any existing municipal authority "providing for the assessment or collection of water or sewage system... charges... by a municipality, but shall be construed as an additional grant of power to any power now prescribed by other statutory, charter or ordinance provisions, or as a validating act to validate existing statutory or charter provisions creating liens which are also provided for by this act."

The lien for water or sewer charges "shall become immediately effective upon the distribution of the water or provision of the sewage system service to the premises or property supplied, but shall not be enforceable for more than 3 years after it becomes effective." MCL 123.162. This is a statutorily prescribed period of limitation on the enforcement of a water or sewer service lien created by the Municipal Water and Sewer Lien Act. There is no basis in the statute for NL Ventures to avoid the lien, except the right to submit an affidavit described in MCL 123.165, which NL Ventures did not exercise.

The Amici suggest that the three year period of limitation provides the legal remedy for any delay in the enforcement and collection of a water or sewer service lien by a municipality. The Act creates the lien and provides a limitation period on the enforceability of the lien. If a municipality delays the collection and enforcement process to the three year point of expiration, the lien is extinguished. Where the Act creates the lien and provides for the expiration of the lien, the courts should not shorten the three year period of limitation provided in the Act because of the method and timing of enforcement actions selected by the municipality.

The Municipal Water and Sewer Lien Act was adopted in 1939, in apparent response to a trial court ruling somewhat similar to the one produced in this case, *Home Owner's Loan Corp v City of Detroit*, 292 Mich 511, 516; 290 NW 888 (1940), which involved a mortgage holder that sought to avoid Detroit's water and sewer liens for the lack of

statutory authority to impose them. By the time the case reached the Michigan Supreme Court, the legislature corrected the problem and enacted 178 PA 1939, MCL 123.161 - 123.167. There is the potential that foreclosing mortgage holders could use a misconstruction of the Municipal Water and Sewer Lien Act in this case to invalidate and avoid water and sewer service liens where the property owner requests and obtains a delay in placing water and sewer service delinquencies on the tax roll, and then loses the mortgaged property through foreclosure. NL Ventures is not contractually liable for the water service charges, because the tenant was the water service customer, and the water service charges cannot be collected directly from NL Ventures, except by the process of placing the delinquent water service charges on the tax roll and against the property where the water service was provided, and foreclosing of the tax lien. Mortgage holders are in the same position as NL Ventures: the water service liens will be paid to protect an interest in the real property where the water service was furnished. The validity of the water service liens is a critical component in the collection of municipal water service charges, because the real property stays put in the municipality where it is connected to the municipal water system, while the customers, property owners and mortgage holders die, dissolve, disappear, move away, or go bankrupt.

There is an unpublished Court of Appeals opinion, *Saginaw Landlords Association v City of Saginaw*, NO 222256, November 2, 2001, in which the courts rebuffed a challenge to the liens for water and sewer services arising under 178 PA 1939, the Municipal Water and Sewer Lien Act, and the Revenue Bond Act, MCL 141.101 *et seq*, but there was no

analysis of how a municipality could enforce the liens and collect them "by the general laws of the state providing for the enforcement of tax liens, or by an ordinance duly passed by the governing body of the municipality." MCL 123.163.

The City of Livonia was not required to discontinue water service to Plaintiff-Appellant's "premises against which the lien created by this act has accrued," or "institute an action for the collection of the same." MCL 123.166. Livonia's "attempt to collect these... water rates... by any process shall not invalidate or waive the lien upon the premises." MCL 123.166.

The water service lien challenged by Plaintiff-Appellant was authorized and created by state law, made immediately effective by state law, with notice to Plaintiff-Appellant as determined by state law, given super priority by state law, and protected from waiver and invalidation by Livonia's attempt to collect the water service charges by any process.

Plaintiff-Appellant's challenges are objections to what the statute says. The lien for water service is created by state law against the land and buildings where the water is distributed. Notice of the lien is provided by the official records of the municipality providing the water service, including the recommendation of the Livonia Water and Sewer Board not to place delinquent water service charges on the tax roll in 2011. The lien is given priority over all liens other than taxes and special assessments. The lien

cannot be waived or invalidated by the attempts of local officials to collect the water service charges.

The subordination agreement was an apparently well intended, but misguided attempt by Livonia's City Treasurer to structure collection of taxes and water service charges while the tenant business struggled to remain viable and make its payments to creditors. The legislature envisioned and anticipated that a municipality's collection of delinquent water or sewer service charges might be difficult, subject to political pressure, and resisted by those who did not use the service or pay attention to the amount of the delinquent charges. "However, a municipality's attempt to collect these sewage system or water... charges... by any process shall not invalidate or waive the lien upon the premises," MCL 123.166. In short, the water bills must be paid.

Livonia's method of enforcement of the water service lien was authorized by the statute in every respect, except for the subordination agreement signed by the City Treasurer that was not authorized by law, approved by the Livonia City Council, or entered with NL Ventures. There is no indication or claim that NL Ventures entered or relied upon the subordination agreement. Whether authorized by law or not, the subordination agreement "shall not invalidate or waive the lien upon the premises." MCL 123.166. This is not a statutory license for municipal officials to break the law while collecting water or sewer liens. This is a limitation on the authority of municipal officials to invalidate or waive the statutorily created lien in the process of enforcement and

collection of it, and an expression of the legislature's intent to protect and preserve the liens for the purpose of funding the utility system.

If the City of Livonia is prevented from collecting the delinquent water service charges through enforcement of the liens, all of the Livonia water utility customers will bear the loss, contrary to the statutorily established risk of loss that is imposed first on the premises where the water services were furnished. That legislatively determined risk of loss should not be disregarded and shifted to the entire water utility customer class by the City of Livonia or the courts. The risk of loss is well placed by the state legislature on the property where the service is furnished, and should not be modified by Livonia's decision to delay in enforcing the water service liens for one year at the request of the water service customer.

Revenue Bond Act; MCL 141.121

"The powers in this act granted may be exercised notwithstanding that no bonds are issued hereunder..." MCL 141.04. The Revenue Bond Act authorizes a lien on the premises, MCL 141.121.

> Charges for services furnished to a premises may be a lien on the premises, and those charges delinquent for 6 months or more may be certified annually to the proper tax assessing officer or agency who shall enter the lien on the next tax roll against the premises to which the services shall have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon the roll and the enforcement of the lien for the taxes. The time and manner of certification and other details in respect to the collection of the

> charges and the enforcement of the lien shall be prescribed by the ordinance adopted by the governing body of the public corporation.

The text of the statute is self-explanatory. The word "may" is permissive, so a municipality is not required by state law to impose or enforce the lien. Charges that are "delinquent for 6 months or more **may** be certified annually to the proper tax assessing officer." Emphasis added. Once certified, the tax assessing officer "**shall** enter the lien on the next tax roll." Emphasis added. This section allows a municipality to determine "[t]he time and manner of certification and other details in respect to the collection of the charges and the enforcement of the lien" by an ordinance adopted by the municipality. Livonia's method of enforcement against NL Ventures is completely consistent with MCL 141.121, because the water service charges that are "delinquent for 6 months or more **may** be certified annually to the proper tax assessing officer rather than **shall** be certified annually to the proper tax assessing officer." Once certified to the tax assessing officer, then the tax assessing officer "**shall** enter the lien on the next tax roll," which is exactly what happened in 2012. While Livonia violated its own ordinance by not certifying the delinquent water service charges to the assessing officer in 2011, (at the request of the tenant water service customer and upon the recommendation of the Livonia Water and Sewer Board) Livonia did not violate any provision of MCL 141.121 by waiting one year to "enter the lien on the next tax roll." Section 141.121(1) requires a municipality to set "rates for services furnished by a public improvement" which "shall be sufficient to provide for"... "the payment of the expenses of administration and operation and the expenses for the maintenance of the public improvement"... and "the payment of the

interest on the principle of bonds payable from the public improvement"... and "the creation of any reserve for the bonds"... and "other expenditures and funds for the public improvement." Section 141.118 says "free service shall not be furnished by a public improvement."

The MML, MTA and PCLS recommend that the Supreme Court exercise extreme caution and restraint in the interpretation of the Revenue Bond Act in this case. Any weakening or dilution of the lien language in MCL 141.121, or the validity and effectiveness of the liens authorized by MCL 141.121, would send shockwaves through Michigan municipal bond financing circles. There are billions of dollars of Michigan municipal public improvements financed by revenue bonds, and the validity of liens authorized by the Revenue Bond Act should not be questioned or threatened by the outcome of this litigation, where there is no claim or argument that the City of Livonia violated the Revenue Bond Act. A ruling that nullifies the water service lien of MCL 141.121 because of Livonia's one year of forbearance in placing delinquent water charges from one account on the tax roll would undermine the Revenue Bond Act by extinguishing the lien intended to protect bond holders and all other water system customers, and secure payment of the water utility system debt, without any evidence that Livonia failed to follow the terms of the Revenue Bond Act.

General Property Tax Laws

MCL 123.163 authorizes a municipality to enforce the lien "by the general laws of the state providing for the enforcement of tax liens," and that is exactly how Livonia began to enforce the lien. Once the delinquent water and sewer service charges were placed on the tax assessment rolls, the controlling body of law is "the general law of the state providing for the enforcement of tax liens" as referenced in MCL 123.163.

MCL 211.78k describes the procedure for the foreclosure of tax liens on real property, and is the proper analytical construct in which to view Plaintiff-Appellant's claims. Property owners are afforded notice and an opportunity to be heard, and "[a] person claiming an interest in a parcel of property set forth in the petition for foreclosure may contest the validity or correctness of the forfeited, unpaid, delinquent taxes, interest, penalties and fees for 1 or more of the following reasons." The list of reasons in MCL 211.78k is definite and limiting, with emphasis added:

> (a) No law authorizes the tax.
> (b) The person appointed to decide whether a tax shall be levied under a law of this state acted without jurisdiction, or did not impose the tax in question.
> (c) The property was exempt from the tax in question, or **the tax was not legally levied**.
> (d) The tax has been paid within the time limited by law for payment or redemption.
> (e) The tax was assessed fraudulently.
> (f) The description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

The claims asserted by Plaintiff-Appellant do not fit in any enumerated category except perhaps "(c) the tax was not legally levied." Plaintiff-Appellant may have anticipated the limited scope of its legal challenges to the collection process that would be available under MCL 211.78k at a foreclosure hearing on the unpaid "taxes" that really are unpaid water service charges, and filed its case earlier in an attempt to expand the scope of its claims and defenses. There is nothing wrong, or illegal, in cleverly positioning a case. However, the potential for misconstruing the Municipal Water and Sewer Lien Act and the Revenue Bond Act increases when the "general laws of the state providing for the enforcement of the tax liens" are not considered when reviewing Plaintiff-Appellant's challenges to the procedure by which the delinquent water service charges were placed on the tax roll.

A delay in the foreclosure of a tax lien does not invalidate the tax lien. See MCL 211.78h, whereby the foreclosing governmental unit may withhold property from the petition for foreclosure. Subsection (4) provides that "[i]f a foreclosing governmental unit withholds property from the petition for foreclosure under subsection (3), a taxing unit's lien for taxes due or the foreclosing governmental unit's right to include the property in a subsequent petition for foreclosure is not prejudiced." Subsection (3)(b)(i) is triggered by a request of the person who "holds title to the property," rather than a tenant of the property, but the statutory authorization of withholding the property from foreclosure still applies. The statute plainly declares in subsection (4), that where the property is withheld from foreclosure by the governmental unit, "the lien for taxes due... is not

prejudiced." This principle applies by analogy to the phase in the collection process where Livonia held the unpaid water and sewer charges off the tax roll in 2011, and put them on the tax roll in 2012. The delay or forbearance does not waive or invalidate the lien. The Plaintiff-Appellant may argue that the delay increased the amount of the delinquent water and sewer service charges to be collected by enforcement of the lien, but that simply is not correct and Livonia's "attempt to collect these sewage or water rates... by any process shall not invalidate or waive the lien upon the premises", MCL 123.166. The three year limitation on the enforceability of the lien provides all of the protection to which the Plaintiff-Appellant is entitled under the statute.

The delay of one year did not, and could not, increase the already existing delinquent water service charges incurred at the property owned by NL Ventures. The water service was provided, the tenant water service customer did not pay, and the lien against the premises for the delinquent water service charges was in effect, with notice established by state law to NL Ventures through the official records of Livonia's water utility. The delinquent charges were incurred, past due, and attached to the property by lien when Livonia did not act in 2011 to add the charges to the roll, and those same charges were entered on the tax roll in 2012, less any payment made in the interim. Additional delinquent water service charges that accrued during 2011 were eligible for certification and entering on the tax roll in 2012, regardless of Livonia's action or inaction in 2011.

Of similar import is MCL 211.24c regarding the notice of an increase in the tentative state equalized valuation or the tentative taxable value for the year. "The failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property," MCL 211.24c(4). The absence of actual notice of the unpaid water and sewer service charges that were accruing prior to placing the charges on the tax roll in 2012 does not invalidate the lien for those charges imposed by the Municipal Water and Sewer Lien Act, especially where the statute says the Plaintiff-Appellant had notice of the lien and all of the delinquencies secured by it. MCL 123.164.

MCL 211.40 describes the timeline by which taxes become a tax lien on the real property, but the lien for water service charges attaches to the subject real property when the service is provided. The lien for water service charges already is attached to the real property when the charges are added to the tax roll. The trial court erroneously ruled that the lien for water and sewer service charges had to be "perfected" by timely addition to the tax roll, despite the absence of any statutory provision for that in the Municipal Water and Sewer Lien Act, the General Property Tax Act, or the Revenue Bond Act. This error was corrected by the Court of Appeals after the trial court erroneously added a formal requirement to perfect water and sewer service liens that is not in the Municipal Water and Sewer Lien Act or the Revenue Bond Act. Once placed on the tax roll, the unpaid water and sewer service charges become a tax lien on the real property on December 1st, which tolls or extends the three year limitation period in MCL 123.162. "The amounts assessed for... taxes on any interest in real property shall become a lien on

that real property on December 1," and "[t]he lien for these amounts... shall continue until paid." MCL 211.40. MCL 211.40 explains why the Revenue Bond Act has no stated limitation period for liens authorized by the Act: once on the tax roll, the liens "shall continue until paid." Livonia's collection methods complied with MCL 123.161 *et seq*, the Revenue Bond Act, and the general laws of the state for the enforcement of tax liens, which is the General Property Tax Act.

While the Plaintiff-Appellant did not style its complaint as a challenge to the assessment roll that produced the tax notice to the Plaintiff, the General Property Tax Act sharply curtails challenges to the rolls. MCL 211.31 says that "[u]pon completion of said roll and its endorsement in manner aforesaid, that same shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned." The Plaintiff-Appellee filed suit in response to the tax bill reflecting delinquent water and sewer charges, and the tax bill was generated from the assessment roll to which those delinquent charges were added. The validity of the tax assessment roll, including the delinquent water service charges added to it, "shall be conclusively presumed by all courts and tribunals to be valid." MCL 211.31. The delay in placing delinquent water service charges on the tax roll from 2011 to 2012 does not overcome the conclusive presumption of MCL 211.31. The MML, MTA, and PCLS offer "the general law of the state providing for the enforcement of tax liens" to the Supreme Court, because that direction is given by the legislature in MCL 123.163 and MCL 141.121(3), and that body of law accurately describes the legal framework of Plaintiff-

Appellant's claims and arguments. Finally, in addition to MCL 123.161 *et seq* and MCL 141.121(3), the General Property Tax Act is another statute that authorizes Livonia's collection method of placing delinquent water service charges on the tax roll in 2012.

LIVONIA IS NOT PROHIBITED FROM COLLECTING THE DISPUTED LIENS BECAUSE OF FAILING TO PLACE THEM ON THE TAX ROLL EACH YEAR AS REQUIRED BY THE LIVONIA ORDINANCE

The Effect of Livonia Violating its own Ordinance

The Plaintiff-Appellee's case rests squarely on the City of Livonia's action, or inaction, in delaying the collection process on the water service charges and liens regarding the real property. In March of 2011, Livonia's staff in the City Assessor's office did not put the delinquent water service charges for the Plaintiff-Appellant's real property on the tax roll for collection. NL Ventures and the trial court assigned motivational significance to this inaction, as if there was a legal duty owed by the City of Livonia to Plaintiff embodied in ordinance sections 13.08.350 and 13.20.190 that was breached or violated. The intentions of the Mayor, City Treasurer, City Assessor, Water and Sewer Board Members, and the clerks in the city offices are wholly irrelevant to the outcome in this case. Whether the unpaid water and sewer service charges were lost, misplaced, or held off the tax assessment roll in the hope that the tenant or landlord would pay them, makes no difference in the operation of the Municipal Water and Sewer Lien Act, or the Revenue Bond Act. Regardless of the motivation and intention of Livonia officials, the delinquent water service charges were not placed on the tax roll and were

not reflected on the Plaintiff-Appellant's tax bill in one year, 2011, but the delinquent water service charges were placed on the tax roll and reflected on the Plaintiff-Appellant's tax bill in the next year, 2012. NL Ventures complains that Livonia should have put the charges on the tax roll when Livonia did not, in 2011, and that Livonia should not have put the charges on the tax roll when Livonia did, in 2012.

There was no harm or damage to NL Ventures by the one year delay in placing the delinquent water and sewer service charges on the tax roll and tax bill. Notice of the lien and the delinquencies secured by it are established by providing water and sewer services, and keeping the records of the service, as plainly stated in MCL 123.164. The charges placed on the tax bill are notice of the fact that delinquent water and sewer services charges have been placed on the tax roll for collection. This is not a filing step that is necessary to form or perfect the lien granted by the Municipal Water and Sewer Lien Act. Placing the charges on the tax roll is a step taken by the municipality to collect the charges and enforce the lien by obtaining payment by the landowner or the county, with ultimate collection by the county through foreclosure for unpaid property taxes and unpaid water service charges. The one year reprieve allowed the tenant to pay and insulate Plaintiff-Appellant's land completely from lien liability, but the tenant did not pay, and enforcement of the lien was at Plaintiff-Appellant's expense. This is not a special, "unique remedy" as characterized below by NL Ventures. This is enforcement and collection of a lien created by state law in the Municipal Water and Sewer Lien Act. The Plaintiff-Appellant's opportunities to evict its tenant for nonpayment of rent,

personal property taxes, water and sewer service charges, or any other obligation under the lease, were not diminished or impaired by Livonia's collection actions.

The trial court turned the statute on its head, invalidating all of the statutorily granted liens when Livonia attempted to collect the water services charges by placing them on the tax roll in 2012. The trial court penalized Livonia for not placing the delinquent water service charges on the tax roll in 2011, and for placing the delinquent water service charges on the tax roll in 2012. Not only did Livonia not "have it both ways" as the Plaintiff-Appellant argued it could not, Livonia "lost it both ways" when all of the water service liens were invalidated. The Court of Appeals corrected the trial court's errors and the Amici encourage the Supreme Court not to reopen these issues by granting leave to appeal or relief after argument on the application.

The statute provides a method by which landlords can avoid the lien completely. MCL 123.165. The Plaintiff-Appellant did not take advantage of this method. Instead, NL Ventures claimed that the City of Livonia's placement of the delinquent water and sewer service charges on the tax roll in 2012 was illegal, because the City of Livonia did not do so in 2011. The primary legal authority for this claim and the relief requested supplied to the trial court, the Court of Appeals, and the Supreme Court was the City of Livonia's failure to follow its own ordinances, §13.08.350 and §13.20.190. The Plaintiff-Appellant overstates the legal consequence of Livonia's one year forbearance in placing

the unpaid water and sewer service charges on the tax roll, contrary to the plain language of the Municipal Water and Sewer Lien Act in MCL 123.162.

There are two Michigan cases in which equitable claims similar to those of NL Ventures were rejected, without relying on the Municipal Water and Sewer Lien Act or the Revenue Bond Act. In *Trahey v City of Inkster*, 311 Mich App 582, 599; 876 NW2d 582 (2015), the Court of Appeals reversed a trial court ruling that allowed the plaintiff to "avoid paying for past utility services received under the doctrine of equitable estoppel." The Court of Appeals noted that "arguments based on equitable estoppel to avoid payment for public utility services received have been consistently rejected," citing *Sigal v Detroit*, 140 Mich App 39, 42; 362 NW2d 886 (1985). In *Sigal*, *id*, p 45, the Court of Appeals concluded: "To put it plainly, no one may avoid payment of a water bill merely because the city did not read the meter." This conclusion was reached after holding that MCL 123.114 precluded the "use of an equitable estoppel argument to avoid liability for payment for water consumed," p 44. The underlying public policy was to allow the water utility to collect its rates equally from all of the customers in a class. Problems with reading meters, sending bills, and sending inaccurate bills, will not prevent a municipality from collecting the correct rates for the water service. The holding in *Sigal, id,* was based in part on MCL 123.114, and the same holding should be reached in this case based on the Municipal Water and Sewer Lien Act and the Revenue Bond Act. NL Ventures seeks a court ruling that would estop or otherwise prevent the City of Livonia from collecting delinquent water service charges by enforcement of the liens created by

the Municipal Water and Sewer Lien Act and authorized by the Revenue Bond Act. The Court of Appeals rejected Plaintiff-Appellant's equitable claims, and so should the Supreme Court.

The Livonia ordinance sections and the Municipal Water and Sewer Lien Act do not provide a penalty to Livonia or a remedy to NL Ventures for the one year delay or forbearance in enforcement of the water service lien by the City of Livonia. Plaintiff-Appellant claims Livonia should have enforced the lien against it sooner, and because Livonia did not, Livonia cannot enforce the lien later. The MML, MTA, and PCLS suggest that the actual consequence of doing nothing to enforce or collect the unpaid water and sewer service lien for one year is defined by the Municipal Water and Sewer Lien Act: unpaid water sewer service charges that arose (when the services were provided) more than three years before the date placed on the tax roll are rendered unenforceable as declared in MCL 123.162. This interpretation of the Municipal Water and Sewer Lien Act and the Livonia ordinances gives effect to all of the pertinent provisions of both, and provides Plaintiff-Appellant with all of the relief to which it may be entitled. If all of the liens and secured delinquent water service charges are determined to be effective and enforceable under the Municipal Water and Sewer Lien Act, the Supreme Court need not analyze and construe the effective time of a lien under the Revenue Bond Act, MCL 141.121, which is found outside of the Revenue Bond Act in MCL 211.40. The MML, MTA, and PCLS urge the Supreme Court to refrain from unnecessary interpretation of the Revenue Bond Act with regard to a period of limitation in which to enforce water

service liens. The bond holders the legislature intended to protect are not litigating the terms of enforcement and collection. With no specific limitation period for liens under the Revenue Bond Act, water service liens under the Act remain enforceable for collection "in the same manner as provided for the collection of taxes assessed upon the roll and the enforcement of the lien for the taxes," MCL 141.121(3), which liens on the tax roll "shall continue until paid." MCL 211.40.

Livonia was under no duty or obligation to collect personal property taxes, ad valorem property taxes, and water and sewer service charges from the tenant or the Plaintiff-Appellant in any particular order or sequence that benefits or protects the Plaintiff-Appellant. There is clear public policy on who bears the risk of loss when a tenant fails to pay for water and sewer services delivered to a parcel of land. The Municipal Water and Sewer Lien Act grants a lien for those charges against the real property, which places the risk of loss squarely on the landowner. The Plaintiff-Appellant's arguments about how it did not use the water, its tenant did, are misplaced. Whether the landowner's guests or tenants use the water services, the landowner (through liened real property) remains liable for the charges as a matter of law, by the lien on his or her land, unless the procedure in MCL 123.165 and MCL 141.121 is utilized, which it was not.

An individual landowner is in the best position to monitor, limit and control liability for water service to his property, whether the service is used by family members,

guests, or tenants. The liens for water service operate in the same manner across the entire class of owners of properties receiving the service. The risk of loss for insolvent tenants who fail to pay is placed on the property owners, but not as a special class of utility customers. Those landowners who choose to lease their properties to tenants remain subject to the liens for water and sewer service charges established by the Municipal Water and Sewer Lien Act and the Revenue Bond Act. There is a "special unique remedy" fashioned solely for landlords by the legislature in MCL 123.165 and MCL 141.121, which affords landlords the only statutorily authorized mechanism by which the liens can be avoided completely, shifting the risk of loss for insolvent tenant customers back to the rest of the public utility customer class. NL Ventures did not use the mechanism authorized by the two statutes, so the risk of loss for the lien liability remains with the property owner. There is no contrary public policy expressed in the Municipal Water and Sewer Lien Act, or the Revenue Bond Act. No legal or equitable relief can be granted, or should be granted, to the Plaintiff-Appellant that overturns the legislature's determination of who bears the risk of loss when a tenant fails to pay water service charges to the municipality.

There is no single rule of law by which the parties or the courts can describe and determine the legal effect of a municipality violating its own ordinance by the action or inaction of municipal officials. When the question arises, careful analysis of the legal duties involved is required.

Livonia's municipal duty to enforce and collect delinquent water service charges is larger than the duty expressed in Livonia's collection ordinances to certify and collect delinquent charges annually. A violation of the duty to certify and collect annually does not obviate the duty or the authority of Livonia to enforce and collect delinquent charges entirely.

The municipal duty to enforce and collect delinquent water service charges is owed to the entire utility customer class The duty is larger in scope, dimension and time, and different from any municipal duty owed to an individual landowner like NL Ventures to certify and collect delinquent charges annually from it. The duty to collect annually is subsumed in the duty to collect liens for services up to three years under MCL 123.162. The Livonia collection ordinances, 13.08.350 and 13.20.190, require certification of delinquencies, not just the delinquencies accrued in one year. Ordering or compelling Livonia to continue violating its own ordinance in 2012 by repeating the inaction of 2011 compounds the ordinance violation instead of correcting it.

Livonia Ordinances Are Directory, Not Mandatory

In reviewing the Livonia ordinances the same rules for interpreting statutes apply, *Bonner v City of Brighton*, 495 Mich 209, 221-222; 848 NW2d 380 (2014).

> Further, because ordinances are treated as statutes for purposes of interpretation and review, we also review de novo the interpretation and application of a municipal ordinance. Since the rules governing statutory interpretation apply with equal force to a municipal ordinance, the goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body. The most reliable evidence of that intent is the language of the ordinance itself and, therefore, the words used in an ordinance must be given their plain and ordinary meanings.

The plain language of the two ordinances reveals Livonia's intent to direct city officials to certify delinquent water service charges and enter them on the tax roll annually for the purpose of enforcing and collecting liens for water service charges through the collection of taxes. Livonia ordinances 13.08.350 and 13.20.190 are printed here, with emphasis added to the word "shall."

> **13.08.350 - Enforcement**
> A. Charges for water service constitute a lien on the property served, and during March of each year the person or agency charged with the management of the system **shall** certify any such charges which as of March 1st of that year have been delinquent six (6) months or more to the city assessor, who **shall** enter the same upon the city tax roll of that year against the premises to which such service shall have been rendered; and said charges **shall** be collected and said lien **shall** be enforced in the same manner as provided in respect to taxes assessed upon such roll.

B. In addition to other remedies provided, the city shall have the right to shut off and discontinue the supply of water to any premises for the nonpayment of water bills when due. Water services so discontinued shall not be restored until all sums then due and owing shall be paid. (Ord. 2075 § 1, 1991: prior code § 5-422).

13.20.190 – Payment of Charges-Enforcement by Lien and Other Remedies

A. The charges and rates specified in this chapter shall constitute a lien on the property served and benefitted, and if not paid within six (6) months after the same are due, the official or officials in charge of the collection thereof **shall**, prior to March 1st of each year, certify to the city assessor the fact of such delinquency, whereupon such charge **shall** be entered upon the next tax roll as a charge against such premises and **shall** be collected and the lien thereof enforced in the same manner as general city taxes against such premises are collected and the lien thereof enforced; provided, however, as provided in Section 21, Act 94, Public Acts of 1933, as amended, where notice is given that a tenant is responsible for the payment of the consumption rate, sewer service charges (if any), and connection rates and charges (if payable in installments), no further water or sewer service shall be rendered to such premises until a cash deposit of not less than twenty-five dollars ($25.00) shall have been made as security for the payment of such charges and service.

B. In addition to other remedies provided, the city shall have the right to shut off and discontinue the supply of water to any premises for the nonpayment of charges and rates herein specified when due.

The two ordinances coincide with the Municipal Water and Sewer Lien Act and the Revenue Bond Act. Both ordinances use the mandatory word "shall" in describing the process for certifying delinquent water service charges to the city accessor, who shall

enter the charges on the tax roll. In response to the request of the tenant water service customer, the Livonia Water and Sewer Board recommended that the delinquent water service charges not be certified to the assessor and not be entered upon the tax roll, so the delinquent charges were not entered upon the tax roll in 2011 and were not reflected on the winter tax bill to NL Ventures.

The term "shall" in both Livonia ordinances is directory, not mandatory, with regard to the owner of real property where water services were provided and for which charges were not paid, not certified to the assessor, not entered on the tax roll, and not reflected on the property owner's tax bill. See the analysis and discussion in the opinion of *In re Forfeiture of Bail Bond*, 406 Mich 320; 852 NW2d 457 (2014).

In *Hooker v Bond*, 118 Mich 255, 257; 76 NW 404 (1898), the Supreme Court noted that "[t]he statute clothes the court of chancery with general jurisdiction over these proceedings" [and] "it does not lose jurisdiction by the failure of any officer to perform the acts imposed upon him within the time fixed by the law, unless the taxpayer is deprived of some right, or unless the law, by negative language, prohibits the doing of the act at any other time." The two statutes authorize Livonia's action of placing the delinquent water service charges on the tax roll, without any negative language prohibiting the action at any other time, other than the three year period of limitation in MCL 123.162.

As in *Hooker*, *id*, Livonia does not lose "jurisdiction" over the delinquent water service charges or the entering of the charges on the tax roll by the passage of time or the failure to act in one year. NL Ventures was not deprived of a hearing or notice described in the statutes or the Livonia ordinances. "The fixing of the exact time for the doing of the act is only directory, where it is not fixed for the purpose of giving a party a hearing or for any other purpose important to him." *Hooker*, *id*, p 257, quoting Justice Cooley. The purpose of the Livonia ordinances is the enforcement and collection of delinquent water service charges already secured by liens authorized and created by state law. "It should clearly appear that the act was mandatory; otherwise it will be held directory." *Hooker*, *id*, p 257. The Livonia ordinances provide no notice or right to property owners whose property is subject to the liens for water service charges. The entire purpose of the Livonia ordinances is to certify and enter delinquent water service charges on the tax roll for the benefit of all of the water utility customers, and bond holders, at the expense of the owner of the liened property.

The Supreme Court in *Hooker*, *id*, p 258, found support for its holding in a positively expressed saving clause in the statute: "Moreover, this is one of the defects expressly cured by the statute that 'no sale shall be held invalid on account of any irregularity, informality, omission, or want of any matter of form or substance in any proceeding that does not prejudice the property rights of the person whose property is taxed.' " The saving clause in MCL 123.166 should operate the same way in the present case before the Supreme Court.

NL Ventures did not receive notice on its tax bill of delinquent water service charges being entered on the tax roll in 2011, because the delinquent water service charges were not entered on the tax roll in 2011. The tax bill accurately reflected that no delinquent water service charges were certified and entered on the tax roll in 2011. The tax bill is not a certification that no lien for water service is in effect, or that all water service bills have been paid.

A close examination of the two Livonia ordinances printed above reveals no notice provision for the benefit of the property owner or the water service customer that must be given prior to, or after, the certification or entering of the delinquent charges on the tax roll. There is no time period in which the property owner can object or obtain a hearing in the two step process of certification and entry on the tax roll. The tax bill, which is not referenced in the two Livonia ordinances, would reflect the certification and entry on the tax after those actions occurred, which it did in 2012.

The Livonia ordinances direct city officials to certify delinquent water charges to the assessing officer who shall enter the charges on the tax roll in two basic steps of water service lien enforcement and collection. These ministerial actions are not predicated on the approval, request, or input of the real property owner where the services were provided, or prior notice to the real property owner that these two basic steps are being taken on water service liens already created and in effect by operation of state law.

The effect of certification and entering the charges on the tax roll certainly is significant, and Livonia has explicit authorization to act in MCL 123.163 and MCL 141.121. There is no language in either statute or the two Livonia ordinances indicating that Livonia cannot, or should not, follow and comply with the ordinances in 2012. The only applicable limitation is the three year period of limitation in MCL 123.162, which would prevent Livonia officials from certifying water service charges more than 3 years old and entering these charges on the tax roll. This is the relief authorized and granted by the legislature in the Municipal Water and Sewer Lien Act for the delay in the enforcement and collection of the water service liens about which the Plaintiff-Appellant complains.

In the context of tort liability, the "[v]iolation of an ordinance is not negligence per se, but only evidence of negligence." *Stevens v Drekich*, 178 Mich App 273, 278; 443 NW2d 401 (1989). "If no duty is owed by the defendant to the plaintiff, an ordinance violation committed by the defendant is not actionable as negligence." *Stevens*, *id*, p 278. "[V}iolation of an ordinance, without more, will not serve as the basis for imposing a legal duty cognizable in negligence theory." *Ward v Franks Nursery & Crafts Inc,* 186 Mich App 120, 135; 463 NW2d 442 (1990). Livonia's two ordinance sections, 13.08.350 and 13.20.190, impose a duty on Livonia officials and staff to certify water and sewer delinquencies and place them on the tax roll, and that duty is owed to all of the water and sewer customers and the bond holders who finance construction of the system, not an individual property owner who is subject to the lien on properties where services are provided.

The failure to follow an ordinance may be corrected by a writ of mandamus, which "is an extraordinary remedy that will be issued only if "(1) the party seeking the writ has a clear legal right to the performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result." *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 366-367, 820 NW2d 208 (2011). Plaintiff-Appellant did not seek a writ of mandamus to compel the City of Livonia to follow ordinance sections 13.08.350 and 13.20.190, for any number of reasons, not the least of which would be the hope that Livonia would not. The legal consequence of Livonia not following ordinance sections 13.08.350 and 13.20.190 in 2011 is the expiration of water service liens that arose under MCL 123.162 more than three years before December 1, 2012. The duty to follow and implement ordinance sections 13.08.350 and 13.20.190 is owed to all of the water and sewer service customers, and to the bond holders, not an individual landowner seeking to avoid the lien for water service charges. A writ of mandamus issued for the Plaintiff-Appellant would result in the outcome challenged in this case: certification and placement of the water service delinquencies on the 2012 winter tax roll.

RELIEF

The application for leave to appeal should be denied. The method of enforcement and collection of the water service lien by Livonia was authorized by statute, and the one year delay by Livonia in entering the delinquent water service charges on the tax roll in 2011 did not prohibit Livonia from entering the delinquent water service charges on the tax roll in 2012. The validity of liens authorized and created by the Municipal Water and Sewer Lien Act and the Revenue Bond Act should not be questioned or weakened.

Dated: March 14, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2017, I electronically filed the Amicus Curiae Brief of the Michigan Municipal League, the Michigan Townships Association, and the Public Corporation Law Section, using the E-filing System which will send notification of such filing to all counsel of record.

/S/ Tracie Lipscomb
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